IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6179 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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GH PATEL COLLEGE OF ENGG. AND TECHNOLOGY

Versus

ALL INDIA COUNCIL FOR TECHNICAL EDUCATION

Appearance:

1. Special Civil Application No. 6179 of 2002

MR DC DAVE for Petitioner No. 1

MR DN PATEL for Respondent No. 1

Mr.Raval, AGP for Respondent No. 2-3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 28/08/2002

ORAL JUDGEMENT

The short facts of the case are that the

petitioner which is an Engineering & Technical College was recognised and approved by All India Council for Technical Education. As per the petitioner, the petitioner college is functioning since 1996 and the intake capacity of the petitioner college was being sanctioned, from time to time. Initially, the intake capacity was sanctioned in two batches and thereafter the petitioner made provision imparting education for other branches also and ultimately it is the case of the petitioner that the intake capacity for the year 2000 was sanctioned of 420 seats. The case of the petitioner is that the admissions to the students in the college are being given by the Central Admission Committee of the State Govt and whenever the admissions are given by Central Committee the college is bound to give admission to such students. It is the case of the petitioner that during the period of granting admission for the year 2001 the Central Admission Committee of the State Govt granted admission to certain more students, i.e. in excess of the intake capacity of the petitioner college and ultimately the said seats which were in addition to the intake capacity were sanctioned by the respondent No.1 after due deliberations with the State Govt. However, it is the case of the respondent No.1 that with a view to see that the career of students is not suffered, as a special case, additional sanction was granted. The admissions granted for the year 2001 are not in dispute. However, it appears that on 3.6.2002 the petitioner college received a communication from the respondent No.1 intimating that the previous intake capacity is reduced to 337 from 400. Mr.Dave, Ld.advocate for the petitioner has stated that, as a matter of fact, previous approved intake capacity was 420 and he stated that there is typographical mistake. Even if it is 400 or 420, it is clear that the same is sought to be reduced by communication dated 3.6.02 and said order dated 3.6.02 of the respondent No.1 is under challenge in this petition.

2. In response to the notice issued by this court DR.Y.T.Krishna Gowda, Central Regional Officer of All India Council for Technical Education has filed affidavit in reply on behalf of respondent No.1 and in the said affidavit in reply at para 5 it has been, interalia, mentioned as under:

> "I say that the committee had recommended reduction in the existing intake for the academic year 2002-2003 due to the reason that the institute had admitted excess students in the year 2001-02. AICTE accorded extension of approval to the institution with the total intake

of 400 for the year 2001-02 but the institute had actually admitted 463 students thereby admitting 63 excess students during the year 2001-02. As a policy decision the Expert Committee had reduced the same number of seats, i.e. 63 seats from the actual sanctioned intake i.e. 400 to 337 for the academic year 2002-03.

3. The tenor of the affidavit in reply sought to be canvassed is that it is a policy decision of the expert committee whereby the number of seats is reduced from 400 to 337. However, from the perusal of the earlier portion of the aforesaid affidavit in reply and more particularly the statements referred to hereinabove it is clear that it is not on account of any revision of norms made by the Expert body the intake capacity is reduced. The only ground weighed with for the reduction of intake capacity is that in the year 2001-02, 63 students were admitted in excess of intake capacity and that is made a basis for the purpose of reducing the existing capacity. I am afraid that such decision can be said to be a policy decision of an expert body. The nature of action on the face of it is a penal action on the part of respondent No.1. There is no dispute on the point that any opportunity of hearing whatsoever is not given by the respondent No.1 before passing the impugned order. It is well settled that whenever any penal action is to be taken against any person concerned, who is likely to be visited with consequences, minimum principles of natural justice of giving opportunity of being heard is required to be given. It is only in exceptional cases such opportunity may not be given, e.g. in the given case, because of extreme urgency of circumstances it may be possible. No special circumstances are shown in the present case. Admittedly, only ground shown is that earlier, i.e. in the year 2001-02 since 63 students were given admission in excess of intake capacity same is made basis for the purpose of reduction of intake capacity.

4. Mr.Dave, Ld.advocate for the petitioner has also submitted that the admission to those 63 students was given on account of the decision of the Central Admission Committee of the State Govt and he submitted that, in any case, fault can not be found with the college administration. There is a considerable force in the said contention. However, since no opportunity of hearing whatsoever is given, I am not expressing any opinion on the said aspect and it will be for the respondent No.1 to take decision afresh after giving opportunity of being heard to the petitioner to point out to the respondent No.1 as to there was no fault on the part of the college administration since the admissions

were granted by the Central Admission Committee of the State Govt.

5. In view of the above, the order, dated 3.6.02 passed by the respondent No.1 copy whereof is produced at annexure "B" to the petition is quashed on the ground that the same is in breach of principles of natural justice. It will be open to the respondent No.1 to give an opportunity of hearing to the petitioner and to other affected persons and then to take a decision afresh. However, since the question incidentally arises as to the present intake capacity of the petitioner college, until the respondent No.1 decides afresh after giving opportunity of hearing in accordance with law, on the said aspect, it is needless to clarify that the intake capacity of the petitioner shall be governed by the sanction order of the respondent No.1 which existed prior to the impugned order 3.6.02.

6. Petition is allowed to the aforesaid extent. Rule is made absolute accordingly. There shall be no order as to costs.

28.8.02 (JAYANT PATEL,J)